

# Client Alert

May 2015

## ***Unmanned Aircraft Systems: Spring 2015 Review***

The past several months have seen a number of significant changes to the legal and regulatory landscape for the operation of Unmanned Aircraft Systems (UAS) in the United States. In addition to the continued efforts by the Federal Aviation Administration (FAA) to integrate UAS into the National Airspace System, other federal agencies, as well as state legislatures, have been taking or considering actions affecting UAS operations. To help you stay abreast of these changes, Hunton & Williams LLP's Unmanned Systems Group presents the following ***Spring 2015 UAS Review***.

- **Proposed sUAS Rule** – On February 23, 2015, the FAA published a notice of proposed rulemaking for the operation of small UAS. The [proposed rule](#) would create a new regulatory program within the Federal Aviation Regulations applicable to UAS weighing less than 55 pounds. Under the proposed rule, the operation of such “small” UAS would be generally authorized subject to certain [standard limitations](#), including: (i) the aircraft must remain within the operator’s visual line of sight (VLOS) at all times, (ii) no flight over any persons not directly involved in the operation, (iii) operations only during daylight hours and visibility of at least three miles from the control station, and (iv) maximum altitude of 500 feet above ground level. The proposed rule would not require an airworthiness certification for small UAS, and would not require the operator to have a pilot’s license, but would require an unmanned aircraft operator certificate with a small UAS rating to be issued under a new certification program. In its proposal, the FAA requested public comment on a variety of topics, and approximately 4,500 comments were submitted by the time the comment period closed on April 24, 2015. The agency has set no timetable for acting on the proposal. Given the extent of the comments and the complexity of many of the issues raised by the proposal, it is generally expected that no final rule is likely to be issued before 2017. If the rule is issued as proposed, it would likely accommodate a wide range of potential commercial applications, but many commenters have criticized the proposed rule as too restrictive and have urged the FAA to relax certain of the proposed constraints, in particular the VLOS requirement and the prohibition on nighttime operations.
- **Presidential Memo and NTIA Multistakeholder Process (Privacy)** – On February 15, 2015, the same day the FAA announced its proposed rule, the White House released a Presidential Memorandum entitled “[Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights and Civil Liberties in Domestic Use of Unmanned Aircraft Systems](#)” to address privacy, civil rights and civil liberties concerns associated with the federal government’s use of UAS. The memorandum requires federal agencies to establish and maintain privacy and civil liberty safeguards, and places restrictions on certain information collection and use practices by federal agencies. See [here](#) for more details. The memorandum also addressed the use of UAS in the private sector, directing the National Telecommunications and Information Administration (NTIA) to undertake a multi-stakeholder engagement process to develop a framework regarding privacy, accountability and transparency for commercial and private UAS use. In response to that directive, NTIA [published a notice](#) on March 4, 2015, seeking comments on best practices concerning privacy issues related to commercial and private use of UAS. NTIA also is convening a series of public meetings following the initial round of comments, which were due by April 20, 2015. Where this process will lead remains to be seen. One possibility is the development of a set of general standards that businesses can adopt as part of their own privacy policies for UAS operations.

- **Blanket COAs for Section 333 Exemption Holders** – In an effort to expedite the use of UAS, the [FAA announced](#) in late March of 2015 that it would begin issuing a “blanket” Certificate of Waiver or Authorization (COA) with each Section 333 exemption that would authorize the operation of UAS below 200 feet and outside certain buffer zones around airports. This blanket COA eliminates the need for an exemption holder to obtain an individual COA for UAS operations occurring within these broad geographic limits, thus speeding up the time line for getting UAS in the air once the Section 333 exemption is granted, but it still imposes certain recordkeeping and pre-flight reporting requirements.
- **Section 333 Summary Grant Process Introduced** – In early April, the [FAA announced](#) that it had commenced using a “summary grant” process to accelerate Section 333 exemption approvals for many applicants. Prior to April, the FAA had granted only fifty-five Section 333 exemptions and was facing a rapidly growing backlog of applications. The FAA will use the summary grant process where it finds that an application is substantially similar to a previously granted exemption, in which case it need not repeat the analysis performed in connection with the prior grant. In announcing the summary grant process, the FAA noted that its “experience in reviewing the Section 333 petitions shows they generally fall into two categories: film/television production and aerial data collection[,]” and that most applications in these categories would likely be handled through the summary grant process. The summary grant process has significantly accelerated the pace of the FAA’s approval of Section 333 exemptions – nearly 400 additional approvals were granted between April 1 and May 25, 2015.
- **Pathfinder Program Announced** – On May 6, 2015, at the Association for Unmanned Vehicle Systems International’s (AUVSI) *Unmanned Systems 2015* conference in Atlanta, Georgia, the [FAA announced](#) a public–private, research-based initiative to obtain operational data intended to expedite the integration of unmanned vehicles into the National Airspace System. The FAA is currently working with private entities on three separate research projects under the [Pathfinder Program](#): CNN will research how visual line of sight (VLOS) flight operations might be used for newsgathering in urban areas; PrecisionHawk, a manufacturer of sensing and data processing tools, will test unmanned aircraft beyond visual line of sight (BLOS) while surveying crops in rural areas; and BNSF Railway will explore the challenges of using unmanned aircraft BLOS for inspections of railroad infrastructure in remote locations. The FAA expects these research efforts to yield data that could result in approval of such operations on a commercial basis within a few years. The FAA has invited proposals from other private entities to conduct UAS research under the Pathfinder Program.
- **B4UFLY App Announced** – On May 6, 2015, also at the AUVSI *Unmanned Systems 2015* conference in Atlanta, Georgia, the FAA [announced a new smartphone app](#), called B4UFLY, that will provide important safety information, such as flight restrictions, airport locations and contact information, to unmanned aircraft pilots, including hobbyists. The app will be released to about 1,000 beta testers later this summer. The beta phase is expected to run for several months, followed by a general release for iOS devices. An Android version will follow. The B4UFLY app is a complement to the [Know Before You Fly](#) educational campaign, in which the FAA is partnering with the AUVSI, the Academy of Model Aeronautics, and the Small UAV Coalition.
- **Center of Excellence for Unmanned Aircraft Systems Announced (Mississippi State University)** – On May 8, 2015, the [FAA selected](#) a team led by Mississippi State University as the agency’s Center of Excellence for Unmanned Aircraft Systems (COE UAS). The Center of Excellence is a public-private partnership that will be focused on research, education, and training in areas important to the safe integration of UAS into the National Airspace System. Initial areas of focus will include detect and avoid technology, control and communications, low-altitude operations safety, spectrum management, air traffic control compatibility, and training and certification of UAS operators. Initial research is expected to commence by September 2015, with a full research agenda to be underway by January 2016. Other members of the Mississippi State University COE team include Drexel University; Embry Riddle Aeronautical University; Kansas

State University; Kansas University; Montana State University; New Mexico State University; North Carolina State University; Oregon State University; University of Alabama, Huntsville; University of Alaska, Fairbanks; University of North Dakota; and Wichita State University. While the relationship between the COE UAS and the six national UAS test sites is still to be determined, the FAA expects that COE flight testing will occur at one or more of the existing test sites.

- **Blanket COAs for Test Sites** – On May 21, 2015, the FAA announced that it had [issued “blanket” Certificates of Waiver or Authorization \(COAs\)](#) to the six authorized UAS test sites that allow them to operate small UAS throughout the National Airspace System at or below 200 feet above ground level, subject to minimal restrictions. These broadly permissive blanket COAs significantly shorten the time it takes for the test sites to get flights in the air and dramatically increases the flexibility of the test sites to conduct flight operations. For more information about this development, please see our recent [Client Alert on this topic](#).
- **Variety of State Legislation** – [According to the National Conference of State Legislatures](#), so far in 2015, 45 states have considered 150 bills related to UAS operations, with 12 states passing legislation and three others adopting resolutions. The proliferation of state and local legislative activity relating to UAS use, coupled with the developing federal regulatory framework, promises to create a complex web of rights, obligations, and remedies, some of which may be in conflict or working at cross purposes. The bills considered address a wide variety of UAS-related legal issues, but the legislation enacted into law to date has generally focused on issues of privacy and image collection, restrictions on law enforcement use of UAS, prohibitions on the use of UAS for hunting, fishing, or trapping (as well as limitations on the use of UAS to harass anyone engaged in such activities), and protecting sensitive infrastructure. Particularly noteworthy among the privacy-focused legislation is Florida’s recently enacted surveillance bill, [SB 766](#). With a broad definition of “surveillance,” an explicit presumption of a reasonable expectation of privacy that is based on what can be observed from ground-level, and a strict written consent requirement for using a camera-equipped UAS to record an image of persons or private property with the intent to conduct surveillance, Florida’s legislation is poised to present complications for what otherwise might be considered innocuous commercial UAS use. Please see the Hunton & Williams’ *Privacy & Information Security Law Blog* for [additional information about Florida’s SB 766](#).

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